

REMARKS

Claims 1-15 are currently pending. Reconsideration and allowance of all pending claims are respectfully requested in light of the following remarks.

Rejections under 35 U.S.C. §103(a)

Claims 1-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,241,533 to Kimoto et al. (“Kimoto”) in view of U.S. Patent Publication No. 2004/0233933 to Munguia (“Munguia”). Applicants traverse this rejection on the grounds that these references are defective in establishing a *prima facie* case of obviousness with respect to the claims for the following reasons.

In particular, the Examiner concedes in the first full paragraph on page 3 of the Office action that “Kimoto does not specifically teach ‘merging the first packet with a second packet of the same protocol’ and ‘transmitting the first merged packet . . . etc.,’” The Examiner then cites Munguia as remedying the deficiencies of Kimoto in this regard; however, Munguia does not qualify as prior art under 35 U.S.C. § 102(e) *vis-a-vis* the pending claims. In this regard, Applicant refers the Examiner to the Declaration under 37 C.F.R. §1.131 (“Rule 1.131 Declaration”) enclosed herewith, which establishes that Applicant conceived of the claimed invention prior to May 23, 2003, the priority date of Munguia, and exercised due diligence from prior to that date until the filing of the present application. As such, Munguia cannot be relied upon to sustain the rejection of claims 1-15.

In view of the foregoing, it is apparent that the Examiner’s burden of factually supporting a *prima facie* case of obviousness has clearly not been met, and the rejection of the claims under 35 U.S.C. §103(a) as unpatentable over the combination of Kimoto and Munguia is improper and should be withdrawn.

Conclusion

All matters set forth in the Office Action have been addressed. Accordingly, it is believed that all claims are in condition for allowance. Favorable consideration and an indication of allowability are respectfully requested.

Should the Examiner deem that an interview with Applicants' undersigned attorney would expedite consideration, the Examiner is invited to call the undersigned attorney at the telephone number indicated below.

Respectfully submitted,




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I hereby certify that this correspondence is being filed with
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on the following date.

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Ellen Lovelace